STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Clampet Corner, LLC, Appellant, **v.** **Polk County Board of Review,** Appellee.	**ORDER** **Docket No. 12-77-0590** **Parcel No. 8912-34-302-018**

G-F Four Investments, Inc., Appellant, **v.** **Polk County Board of Review,** Appellee.	**ORDER** **Docket No. 12-77-0736** **Parcel No. 8912-34-302-018**

On August 13, 2013, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Bruce Baker of Nyemaster Goode, P.C., represented Appellant Clampet Corner, LLC. Attorney Daniel Manning of Lillis O'Malley Olson Manning Pose Templeman, LLP, Des Moines, represented Appellant G-F Four Investments, Inc. Assistant Polk County Attorney David Hibbard represented the Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Background & Procedural History

These appeals involve the 2012 assessment of property located at 2601 Adventureland Drive, Altoona, Iowa. It is currently operated as Jethro 'n Jake's Smokehouse Steaks. The property is 1.527 acres and is improved with a 4712 square feet, one-story, restaurant building built in 1995 and remodeled in 2010. In 2011, an 800-square-foot, heated, enclosed patio was added to the building. The property is also improved with pavement, signage, and basic landscaping. The property has frontage on Adventureland Drive at the intersection of Prairie Meadows Drive. It is also visible from Interstate 80.

The property is owned by G-F Four Investments, Inc. The subject property was previously owner-occupied and operated as a Godfather's Pizza. In September 2008, the property was vacated and offered for sale or lease at $14.00 per-square-foot. In December 2009, the owner reduced the lease rate to $8.00 per-square-foot. In June 2010, GF-Four leased the property to Clampet Corner, which subsequently subleased the property to Jethro's. Clampet Corner and Jethro's have the same sole owner, Bruce Gerleman. The property was vacant for a period of approximately eighteen months before a lease was executed between G-F Four and Clampet Corner.

In 2007, when the property was operating as a Godfather's Pizza, it was assessed for $900,000. In 2010, the assessment was reduced to $714,000. Clampet Corner began making lease payments in September 2010. The lease (Exhibit I) included an option to purchase the property, as follows.

> Landlord hereby extends an option to the Tenant to purchase said property upon the following terms and conditions: From the period of time June 1, 2010, through August 31, 2012, the purchase price shall be $715,000 and for the period of time from September 1, 2012 through August 31, 2015, the purchase price shall be the assessed value of the Polk County Assessor of the property. The option shall

> expire at the expiration of the initial lease term. The option lapses at any time Clampet Corner, L.L.C., ceases to operate a restaurant on the property. No assignee of this lease shall be considered to be operating a restaurant on behalf of Clampet Corner, L.L.C. Tenant upon exercising the option and closing the transaction shall be given a credit for 20% of all minimum rental payments made as defined in Paragraph 2.

Clampet Corner was responsible for property taxes as part of the lease agreement.

After entering the lease and prior to the Polk County Assessor setting the 2011 assessment, Gerleman contacted the Assessor's Office and asked that the assessment be lowered. Gerleman did not notify G-F Four he was seeking a reduction in the assessment. The 2011 assessment was subsequently set at $323,000. This was a reduction of $391,000, or 55%, from the previous year's valuation. Neither G-F Four nor Clampet Corner protested the 2011 valuation.

In 2012, the property was again reassessed and valued at $461,000; representing $279,000 in land value and $182,000 in improvement value. Both G-F Four and Clampet Corner filed protests of the assessment. G-F Four contended the property was under-assessed, inequitably assessed, and there was an error in the assessment under Iowa Code sections 441.37(1)(a)(1-2; 4). It asserted the appropriate valuation was $800,000 based on two appraisals it had obtained. Conversely, Clampet Corner contended the property was over-assessed under section 441.37(1)(a)(2), and contended the correct value of the property was $335,066.

After two separate hearings, the Board of Review issued a decision increasing the assessment to $582,000, by increasing the land value to $400,000 and leaving the improvement value unchanged. It stated, "The assessed value of this property was changed because the market data did not support the assessment."

Both parties then appealed to this Board, resulting in a cross-appeal. We consolidated the cases into one hearing.

Appraisals

The record includes three appraisals and one review of the appraisals.

Olson Appraisal

Michael Olson of The Olson Group, Urbandale, Iowa, completed an appraisal of the subject property and testified on behalf of G-F Four. (Exhibit K). Olson's final opinion of the property's fee simple market value is $800,000, as of January 1, 2012. He considered all three approaches to value, but noted that Iowa law prefers the sales comparison approach to value.

Olson first discussed the scope of his assignment. He stated he completed the report for assessment purposes and he valued the property's fee simple market value. He identified this value as the unencumbered ownership of the property; and he based his opinion on market sales and rents. Olson testified he was familiar with the definition of market value in Iowa Code section 441.21(1) and believes it is similar to other market value definitions.

Olson also testified he was readily able to establish the market value of the subject property by developing the sales comparison approach. He included four sales of operating restaurants in his analysis. Olson made adjustments for differences between these properties and the subject for elements such as date of sale, location, improvement size, age/condition, and quality. The sales occurred between December 2008 and September 2010 for $400,000 to $850,000. From this range, Olson concluded a final opinion of value of $780,000.

On cross-examination, Clampet Corner critiqued Olson for his date of sale adjustments, specifically the difference in adjustment between Sales #1 and #3. Olson made a date of sale adjustment of 10% to Sale #3 because it sold in 2008. He noted in 2008 the market was carrying a premium for commercial properties, and this changed sometime in late 2009. He did not make the same adjustment to Sale #1. At hearing he acknowledged that in retrospect he should have made a time adjustment to Sale #1 as well, since it sold in early 2009. He further noted the

adjustment to Sale #1 would have only been between 5-10%, like the adjustment to Sale #3, and thus would have likely had little impact on his final opinion of value.

Regarding the location adjustments, Olson indicates the subject property is close to the interstate, across the street from Prairie Meadows and Adventureland Park, and numerous other convenience stores and restaurants are in the immediate vicinity. He believes the subject's location is excellent based on these facts. Additionally, he notes the subject's size is "very adequate for functional use and utility" with good access and visibility. Olson considered all four sales inferior to the subject in age/condition; and he identified Sales #1, #3, and #4, as inferior in quality to the subject property. Olson believes Sales #1 and #4 are inferior to the subject in terms of location, whereas Sale #2 is superior due to being in a higher traffic area near Merle Hay Mall.

Olson further believes the subject property was in average condition as of the effective date. It had a new roof, updated interior, and new enclosed patio. In Olson's opinion, "it's a nice building."

A point of contention between the parties was Sale #4 (Mustard's building), which is located at 1701 N Ankeny Boulevard, Ankeny. Both Olson and Lock used this sale in their appraisals. Clampet Corner questioned Olson about his condition adjustment for the Mustard's building on cross-examination, but he defended the adjustment. He indicated that even though the Mustard's building is newer than the subject (built in 2004 compared to 1995), the subject was remodeled in 2010. Olson indicated the subject property's décor was updated with the Jethro's brand. He stated the look was "rustic" or "bare-bones" and, regardless of the conceptual perception, it "costs money to get that look." Olson further explained the Mustard's building had significant water damage prior to its sale and was therefore inferior in his opinion. He indicated

the Mustard's building had been listed and vacant for some time. During that time the sprinkler system was shut off, subsequently froze, and caused significant interior water damage. He also found support for this conclusion on the Mustard's building property record card, which indicated the building was in below normal condition at the time of sale. Additionally, Olson testified he spoke with realtor Tim Sharpe, who was involved in the sale of the Mustard's building. Sharpe verified the property was in poor condition from the water damage. Olson stated Sharpe claimed he would never have said the building was in "good" condition at the time of sale.

Olson also critiqued Appraiser Fred Lock's 20% downward location adjustment to the Mustard's building sale. Olson noted there is vacant land directly west of the Mustard's building; office buildings to the north; and a carwash and nursery to the south. Olson does not believe the Mustard's building location is superior to the subject's.

Olson testified he developed the cost approach but gave it no weight in his final opinion of value because of the property's age. He developed it primarily for the purposes of determining the land value. Olson believes the subject property has some external obsolescence that would further limit the reliability of this approach. Because of the subject's age, he believed attempting to back into an obsolescence adjustment would have been an exercise in futility. Ultimately, he asserts any difference between the cost approach conclusions ($1,170,000) and his final opinion of value ($800,000) can be attributed to external obsolescence, which in his opinion represents the slowdown of the commercial market.

Olson also developed the income approach. Olson testified he considered the property's existing lease, but after analyzing it and other comparable rents, he determined the subject's rent was not representative of the market. Therefore, he did not include it as a comparable rent. He

stated $8.00 per-square-foot was far below all other similar restaurant-style properties. Olson also testified he was subsequently further convinced the lease is below market because no other appraisal in the record had comparable rents below $13.00 per-square-foot.

On cross-examination, Olson was critical of the subject's lease terms, specifically the purchase option tied to the property's assessment. In theory the assessed value is supposed to be market value, but in Olson's thirty-years of experience, the assessment may be something different. Ultimately, Olson believes it is a bad lease. Olson conclusively indicated his belief that the subject's lease was not the most important consideration of market value.

Additionally, Clampet Corner cross-examined Olson regarding the ownership and listing history of the subject property that led up to the current lease agreement. Olson did not find the leasing history relevant to the January 1, 2012, value. He does not believe the lease is representative of market rates. Further, Olson noted improvements were made to the property *after* the lease was signed, and its condition improved, which would raise the rent.

Olson found three comparable properties with rents of $12.34 to $20.50 per-square-foot. He estimated a market rent for the subject property of $17.50 per-square-foot, as of January 1, 2012. Olson noted that while he adjusted the comparable rentals, nothing in his appraisal report showed the direction or amount of his adjustments. It would have been helpful for this Board to see the adjustments, but Olson's testimony provided rationale and further support for his analysis. Clampet Corner also criticized Olson for not providing detailed information about his comparable rentals. However, we note typical appraisal practice allows information to be kept confidential at the request of the parties providing it to the appraiser. Specifically, the Confidentiality section of the Ethics Rule of the Uniform Standards of Professional Appraisal Practice (USPAP), which all certified or licensed appraisers are required to follow, allows it.

2012-2013 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, THE APPRAISAL FOUNDATION, U-8-9. Without assurance the information would be kept confidential, it is unlikely market participants would share it with an appraiser. We also note that all three of the appraisal reports in the record identified some information as confidential including redacted addresses or other factors used to identify the properties, which further demonstrates this as a normal procedure within the industry.

After determining the market rent of $17.50 per-square-foot, Olson then developed a Net Operating Income (NOI) of roughly $70,000, which he capitalized at 8.6%, resulting in his final, rounded conclusion of value by the income approach of $810,000.

Reconciling his three developed approaches, Olson determined the sales and income approaches best established the subject's value, and he concludes an opinion of $800,000 for the subject property as of January 1, 2012.

Nelsen Appraisal

Gene Nelsen of Nelsen Appraisal Associates, Inc, Urbandale, Iowa, also completed an appraisal for G-F Four and testified on its behalf. His final opinion of the property's fee simple market value is $750,000, as of January 2, 2012.

Nelsen testified that Michael Gano, an attorney and the son of G-F Four's President, contacted him in late 2011 to engage him in appraising the subject property. At that time, Nelsen understood GF-Four was in negotiations with Clampet Corner to sell the property. Nelsen was unaware the report would eventually be used for assessment appeal purposes. Although Nelsen believed the original intent of the report was to determine the fee-simple fair market value for potential sale of the property, G-F Four later asked him to present his opinion and findings regarding the January 2012 market value of the property to the Board of Review.

On cross-examination, Clampet Corner questioned Nelsen about how he identified the intended use of the appraisal. (Exhibit J, page 3). The report states it is for "the sole purpose of assisting the client in determining value for underwriting a real estate loan." Nelsen explained this was boilerplate language, and he originally used it because he was unclear of the exact intended use of the appraisal. Nelsen further explained, however, that the appraisal was never given to a lender. He admits he failed to go back and change the intended use language.

Nelsen developed all three approaches to value. While this is an error, we do not find this oversight significant.

In the sales approach, Nelsen considered six restaurant-style property sales in the Des Moines market area. He finds the subject property has a good location because it has good traffic exposure and visibility and is located near the entrance of Prairie Meadows, Adventureland Park, and other restaurant/retail properties. Nelsen used two of the same comparable sales as Olson: Sales #4 (3605 Merle Hay Road) and #6 (3121 Ingersoll Avenue). This was a coincidence, as Nelsen testified he was unaware Olson had developed an appraisal until much later.

Nelsen adjusted the sales based on typical appraisal methodology. (Exhibit J, pp. 42-43). After adjustments, Nelsen's comparable sales indicated a range of value of roughly $680,000 to $761,000. From this range, Nelsen concluded a final opinion of value of $754,000.

At hearing it was noted that Sale #1 required 91% adjustments. Nelsen indicated there is no specific industry standard that would require him to exclude the sale. He further explained it was included to bracket the value of the subject property, but in retrospect could have been removed. We find this sale is the least comparable in his appraisal because of the adjustments and thus a less reliable indicator of value.

On cross-examination it also became apparent Nelsen erred by including Sale #5 (2401 Delaware Avenue, Ankeny) as an improved property sale. The sale occurred in 2009, but the improvements were not built until 2010. This seems to indicate the sale actually reflected a site value, rather than an improved value. Nelsen noted he believed it was recorded as an improved sale, but he did not personally verify it. Because this sale appears to be representative of a land sale and Nelsen did not confirm it, we find it unreliable.

This leaves four remaining sales. Sales #2, #3, #4, and #6, have an adjusted value range of roughly $728,000 to $761,000. This range supports both Nelsen's sales comparison reconciliation as well as his final opinion of value. Nelsen testified he did not have difficulty finding sales for comparison and was readily able to establish the market value of the subject property using the sales comparison approach. Again, we note this is the method preferred by Iowa law.

Nelsen also developed the cost approach and found it supported the value developed in the sales comparison approach. Nelsen determined a land value opinion of $332,580 using four comparable site sales. (Exhibit J, p. 31-32). Comparable #1 (2437 Adventureland Drive, Altoona) was the sale of a different parcel owned by G-F Four Investments. It is located 240 feet east of the subject property. Although he included it in the analysis, Nelsen did not think it was the best available sale because the land was just less than 40,000 square feet, which he asserts the market would consider a minimum size for a restaurant/retail type of property. He believes most retailers would consider an acre as the minimum requirement to build. He further believes the property may have been used for an accessory use or a smaller property type. Nelsen did not consider the cost approach of high significance in this appraisal problem, and did not spend much time on its development.

He developed a reproduction cost new (RCN) of the subject property using Marshall and Swift Valuation Services, and then applied 30% depreciation, resulting in a final opinion of $775,107 for the total cost approach of land and improvements. He notes this was a little higher than the sales comparison approach.

Last, Nelsen developed the income approach. As he developed the income approach, he considered the terms of the original lease, which began at $8 per-square-foot on a triple net basis. During his analysis he found this lease to be "quite a bit lower" than the comparable properties and rentals in the area. The way he understood the original lease was that it also included a purchase option, which the owners believed would be acted upon in just a couple of years. Nelsen said that Gano told him G-F Four "gave Gerleman a break because he was going to buy the building," and was also making improvements to the property.

Nelsen inspected the subject property in early January 2012 and testified he was provided with verbal information about the lease at that time. Nelsen explained he knew the terms of the lease by "number only" and asked for the lease later. He did not remember if a copy was given to him before he completed the report. Nelsen stated he was aware of the lease rates, monthly payment for the first sixty months, the date the lease started, and the agreed upon option price, as well as other details.

On cross-examination, Nelsen could not recall the lease history of the subject property. Another error pointed out in Nelsen's appraisal was identified at hearing. On page 46, his appraisal states:

> the lease rate for the subject property is less than considering the amenities of the property and comparing the features to comparable space in the market area. It is our determination, after reviewing the general market and studying competitive facilities that the current rentals are at market.

Nelsen identified two words were missing from this paragraph. It should have stated "the lease rate for the subject property is less than *market*" and "current rentals are at *below* market." He acknowledged these omissions are critical errors.

Nelsen did not consider the lease indicative of a market rate for the property as of January 2012. As Nelsen stated, the lease was rendered meaningless because of the lease's effective date and the subsequent improvements to the property over an 18-month period. Nelsen was aware of the subject property's vacancy when the lease was initiated, but the entire interior had been significantly renovated to a "fine restaurant" since that time. He noted the roof was replaced, the entire façade had been repaired, and the addition of an enclosed patio. Nelsen stated that "a lease may or may not be written at market levels," but in essence, the purpose of an assessment appraisal is to determine the fee simple market value. Further, he stated, "if a lease is significantly higher or lower than market rate, it should be disregarded." In establishing the market rent, Nelsen looked beyond the existing lease.

Nelsen's income approach does not identify any specific comparable leases, although he concludes a rent of $15 per-square-foot for the subject property before an allowance for vacancy and rent loss. The $15 per-square-foot market rent indicates a potential gross income (PGI) before vacancy and rent loss of $70,680. Nelsen ultimately concludes an NOI of $62,611 and a capitalization rate of 8.41%, resulting in an opinion of value by the income approach of $744,721; rounded to $745,000. We find this to be very similar to Olson's report, which concluded an NOI of $69,761 and a capitalization rate of 8.6%.

On cross-examination, Clampet Corner criticized Nelsen for not including confidential information in his appraisal. He explained he could not discuss the information because it could potentially be a breach of confidentiality. When pressed on why he did not include any

information, even redacted information, about the leases he considered, he indicated that restaurant data is even more sensitive than most commercial properties. Because of this, he believes even redacted information could be used to identify the comparables with minimal research. Again, we note similar to Olson's use of confidential information, this is typical in the income approach to value, and all three appraisers kept information confidential in their respective reports.

In reconciling his approaches to value, Nelsen considered all three approaches and testified that he gave most consideration to the sales and income approaches to value. He ultimately concluded an opinion of $750,000, for the subject property as of January 2, 2012.

Jack Gano Testimony

Jack Gano is a shareholder and President of G-F Four Investments. Jack explained that G-F Four closed Godfather's Pizza in 2008, two years prior to the existing lease. During that two-year period, GF-Four listed the property for sale and later for lease. He also stated some individuals looked at the property during that time-period. While the property was sitting vacant, G-F Four was paying for utilities, taxes, and maintenance on the building, spending approximately $40,000 a year on these items. Because of this, it made sense to lease the property. G-F Four figured if it leased the subject property for $3000 a month ($36,000 annually), and saved $40,000 in annual expenses, it would net $76,000 per year. Therefore, it was willing to lease the property at $8.00 per-square-foot.

At the time G-F Four entered into the lease, the property was assessed for $714,000. GF-Four felt that was a reasonable and fair amount. It had never argued its assessments were unreasonable, and had no idea the assessed value would drop the way it did. In Jack Gano's opinion, G-F Four believed it entered into a fair negotiation and cannot understand or explain

why the assessment dropped so drastically. Jack further explained that what G-F Four found confusing was when the property was vacant for two years, the assessment never changed. It could not understand why the property would have had a greater value "closed" than remodeled and operating as a business. Then, after it was improved, occupied, and operating, the assessment was drastically reduced. Like G-F Four, this Board find's the assessment history of the subject property to be suspect, especially given the subject property's highest assessment was when it was vacant. We are unconvinced this pattern is logical. Ultimately, although Jack's testimony does not establish a market value opinion of the subject property, it provides a history of the subject property's use and previous assessments.

Bruce Gerleman Testimony

Bruce Gerleman is an independent real estate developer/investor and restaurateur, and, as previously noted is the sole owner of Clampet Corner and Jethro 'n Jake's Smokehouse Steaks. He has been involved in this line of work since 1980 and has extensive experience in renovating historic and commercial properties. In 2008, he started the Jethro's chain, which now has four restaurants in the metro area.

In early May 2010, Gerleman pursued leasing the subject property. Gerleman drafted the proposal to lease the subject property, including the option to buy. (Exhibit 1). He indicated there were several counter offers during negotiations. Ultimately, Ruhl and Ruhl drafted the final lease (Exhibit 2) based on Gerleman's original proposal.

The lease is triple net, which requires Clampet Corner to pay the taxes and maintenance on the property. A $50,000 tenant improvement allowance, later referred to as a loan, was also included. All of the furniture, fixtures, and equipment (FF&E) were included and became personal property of Clampet Corner. Additionally, if Clampet Corner exercised the option to

purchase, then 20% of all previous lease payments would be deducted from the purchase price amount.

Gerleman testified, "95% of his contact [with G-F Four] was through the [listing] broker," but that he spoke with Jack Gano "three to four times on the phone." Gerleman testified G-F Four never stated it was offering him a below market lease. Further, he notes his belief that "at that time the country was in a real[ly] bad state." He said, "no one could borrow money, banks were not lending money, values were plummeting, and there was no one investing or taking risk because they couldn't get the money to do it." He did admit, however, the economy was better in 2012 than it was in 2010.

Gerleman said he proposed to set the purchase price at the property's assessed value. He based this on his experience in purchasing the first Jethro's near Drake University, where he negotiated the sales price in the same manner. In his opinion, the assessed value and fair market value were synonymous. In contrast, Gerleman also stated that in dealing with the Polk County Assessor's Office, "the assessment always seems to be higher [than market value], not lower."

When Gerleman entered into the lease agreement for the subject property he claims he did not know what the assessment would be after renovating the property. He also stated that despite being the drafter and setting the purchase price at $715,000 for year one and year two, which was the assessed value at the time, he never intended to buy the subject property at that time for that price. He asserts he "wanted to evaluate the building and see how business was" before purchasing it. Gerleman indicated he believed any future purchase under the lease for the assessed value would be the same as purchasing the property for its fair market value.

Gerleman also discussed the physical changes to the property since entering the lease. He noted the interior of the property had drop ceilings, a party room with built-in shelves and service area, a salad bar island, sheet rocked bulkheads, suspended hanging lights, and other typical finish of a Godfather's Pizza. The finish also included built-in booths, carpeted floors, and many tables and chairs. After he took over the property, he explained his renovation to convert the improvements to fit with the established Jethro's brand. Gerleman stated the Jethro's brand "looks like the inside of a barn." To do this, the interior of the property is gutted and virtually all of the finish is removed, with the exception of some bead board wainscoting. (Exhibit 4). He exposed all of the wood, and then put plywood over areas where they needed to insulate. He explained that when you look up, you see the rafters and the underside of the roof "with the roofing nails poking throughout." After exposing all the beams and rafters, and putting up plywood, they apply a high quality varnish to "make it shiny and clean, and keep the dust down." Additionally, Gerleman found it necessary to modify the hood system in the kitchen because it was not big enough for his needs. He also added a two-by-six foot wood-frame bar covered in copper with a granite counter. Silver barn siding was added over the existing asphalt shingles of the mansard style roof to further the "barn décor look. The ductwork was also exposed. Gerleman states the décor includes primarily large TV's throughout the restaurant, which are necessary for a sports bar. Additionally, he decorates the interior with numerous neon beer or alcohol signs, which are given to him by his distributors. We note these items are personal property and not part of the real estate.

Gerleman testified he spent about $80,000, which included the $50,000 loan, to renovate the subject property. However, he implies there was ultimately no return on this investment. In fact, he asserts he devalued the property. The gist of Gerleman's testimony regarding the

renovations of the subject property is that the décor of Jethro's is limited, inexpensive, and of minimal value. However, when questioned, Gerleman admitted the demolition of the existing finish and remodeling was critical to make the property look like the going-concern brand that is Jethro's. We are simply not convinced the improvements Gerleman made devalued the property.

Gerleman testified he contacted the Polk County Assessor's Office between signing the lease in June 2010 and sometime before the January 1, 2011, assessment to have the assessment reduced. He met with someone from the Assessor's Office to advise them of the lease and that he would be appealing the property taxes. The Assessor's Office asked for a copy of the lease and conducted an interior inspection of the property in July 2010; roughly four to six weeks after the lease was signed. Subsequently, the subject property's assessed value was reduced to a total value of $323,000. Gerleman stated that in his opinion, he had "devalued" the building by gutting it; and that essentially, the Assessor's Office agreed. To his knowledge, the Assessor's Office relied heavily on the lease in determining the value of the subject property.

Sometime after the 2011 assessment, Gerleman completed a patio addition, which he asserts is just a "horse fence" and two-by-six, wood-frame construction. After the addition, the 2012 assessment increased to $461,000. Gerleman then appealed the assessed value. He asserts the addition only had a cost of roughly "$47,000 to $48,000" and in his opinion, the increase of $138,000 "was much too high." G-F Four also appealed the 2012 assessment. Ultimately, the Board of Review disagreed with the Assessor's Office's Appraisal Analysis, which had recommended no change, and raised the total value of the 2012 assessment for the subject property to $582,000.

Gerleman believes the Board of Review raised the land value of the subject property because it did not find it equitable with other similar commercial sites along the same road.

Gerleman explained along the road are several restaurants and a gas station, with assessed land values of $6.00 per-square-foot. The Board of Review thus increased the subject property's land value to $6.00 per-square-foot to match the neighboring parcels.

Gerleman testified regarding land values of some neighboring vacant parcels. According to Gerleman, another lot owned by G-F Four was listed and sold for $2.70 per-square foot. He claims that since the sale, a pizza place was built on the site. According to Gerleman, it is a 4000 square-foot building, which he says disproves Nelsen's opinion the site was too small for a restaurant. Gerleman admitted, however, the subject site has a better location due to its access.

He also referred to an adjacent 3.3 acre parcel he claims "has been for sale for around ten years or possibly more." The vacant site has direct visibility on I-80, interstate signage, and according to Gerleman was listed for $2.50 per-square-foot "for a decade." It is unknown if this site was improved with water or sewer. This site was also owned by G-F Four. This property sold in the spring of 2013 for $2.15 per-square-foot and was due to close in September 2013. Based on the sale price per-square-foot of these two sites, Gerleman disagrees with the Board of Review's decision to value the subject property's land at $6.00 per-square-foot in 2012, and he believes that all of the site assessments in this area are too high. We note Gerleman did not adjust either of these sales to establish a value for the subject property; and that one sale occurred after the assessment date of January 1, 2012. Further, he does not address that both of these sites were owned by G-F Four; or what its motivations may have been in selling the sites.

Like Jack Gano's testimony, we find Gerleman's testimony does not establish a fair market value opinion of the subject property as of January 1, 2012. However, his testimony does provide ample evidence regarding the property's condition and insight into the impetus of this appeal.

Lock's Appraisal

Fred Lock of Iowa Appraisal and Research Corporation, Des Moines, Iowa, completed an appraisal for the Polk County Assessor's Office. He prepared a report valuing the property as of both January 1, 2011, and January 1, 2012. Clampet Corner called Lock as a witness.

Lock explained he was initially engaged to complete an appraisal on the subject property by Polk County Assessor Jim Maloney. Lock testified he was told the appraisal would be used for assessment appeal purposes to provide a value of the subject property as of January 1, 2011, and January 1, 2012. He did not present his appraisal to or appear before the Polk County Board of Review. Nor did he offer any critique of Olson or Nelsen's reports to the Board of Review.

Lock explained he met with Gerleman and then conducted research and analysis to arrive at values for both years. Ultimately, we are only concerned with the January 1, 2012, opinion of value, which Lock concluded was $460,000 for the fee simple estate.

In arriving at his opinion, Lock developed the sales comparison and the income approaches to value. He determined the cost approach was not relevant because of the subject property's age. He believes that after ten years properties have too much depreciation and obsolescence; and trying to isolate, measure, and then apply any identifiable depreciation or obsolescence typically has unreliable results.

Lock considered three sales he believes are relevant in the sales approach. Lock's Sale #1, the Mustard's building, was also in Olson's appraisal as previously noted. Lock testified he "gave primary consideration to Sale #1 and only secondary consideration to Sales #2 and #3." Lock asserts the Mustard's building location is superior to the subject's. He bases this opinion on land sales. Lock explained his judgment for the location adjustment is based on major factors such as traffic arteries, type and quality of the development, and acceptance of the market for

development in that location. After reviewing sales of land near the subject property and the comparable properties, he quantified an adjustment. In this instance, he believes Sale #1 is 20% superior to the subject property. When questioned about the land surrounding Sale #1, Lock knew few details including what actually existed around the property or the name of the development. Lock did not independently verify the sales in his report, but claimed someone in his office did. Lock's conclusions are questionable when he cannot even identify the development, or lack thereof, at the location of the comparable sale, yet claims to base his adjustment on this factor.

Lock made a 3% downward age/condition adjustment to the Mustard's building, contrary to Olson who determined the comparable was inferior to the subject property because of significant water damage. Lock testified he only became aware of the Mustard's building water damage the day of this Board's hearing. He further testified his staff talked to Tim Sharpe, the agent, the morning of the hearing. Sharpe confirmed there was water damage at the time of sale; although Lock claimed Sharpe didn't know how much water damage there was or how much it would take to fix it. Further, Lock testified his office found a building permit for $40,000 issued by the City of Ankeny to the buyer of the property. Lock's office was unable to get a copy of it; yet Lock asserted the building permit may have been to repair the water damage and possibly also included replacement of other fixtures or equipment. Lock claims if the entire $40,000 went to replace the damage caused by the water leak, it would require that amount be added to the sales price: $8.00 per-square-foot. Despite his perceived lack of knowledge of the detail of Sale #1, Lock believes it is a fair indicator of the market value of the subject property. He asserts there are many "facts" that an appraiser will be unable to uncover or know "because it is impossible to know everything." Further, he stated, "you can't be assured that you know

everything about every sale, so we work with the information we have as if it's the best information we can get." While we agree it is sometimes difficult to know every nuance of a sale, we question the due diligence of his research. Clearly, he was able to verify the property had water damage, but not until after he developed his opinion of value. Additionally, the property record card for this sale identified the improvements as below normal as of the sale date. This type of information is readily available for analysis, and we believe, should have been considered prior to developing conclusions. Because Lock did not conduct important research about the sale until after he reached his value conclusions, we find his credibility diminished. These facts greatly affect our ability to rely on his work product.

Lock made similar adjustments to Sales #2 and #3 as he did to Sale #1. He determined Sale #2 was superior to the subject in location but inferior in age/condition. He found Sale #3 to be inferior in location to the subject property and inferior in age/condition. However, the adjustments for location and age/condition of these sales appear to be inconsistent. We have not found adequate explanation for the differences in the age/condition adjustments for any of Lock's selected comparable sales compared to the subject.

Further, Lock testified Sale #2 was converted to an office after it sold, but did not know what Sale #3 was converted to when it sold.

The only difference between Lock's 2011 and 2012 analysis was the addition of the enclosed patio to the subject property. Lock added a line adjustment for this element and adjusted his three sales between 2% and 4%. He explains he was told the patio cost roughly $35,000, which he confirmed with Marshall and Swift Valuation Services. We note this is $12,000 to $13,000 less than the cost Gerleman stated in his testimony. In Lock's opinion, the addition has nominal value because he does "not believe a buyer would pay full price" for it and

"the next user would not view it was a necessary component." We note the fee simple value, as of January 1, 2012, should be for the property as it existed at the time. Ultimately, Lock concluded a rounded value for the subject property by the sales comparison approach of $490,000.

Lock also relied on the income approach to value. Lock reported and testified that the property owner's representative said "they were willing to agree to rent the subject for what they considered to be a low amount because they expected the tenant to exercise the option and purchase the subject at or near the initial option price." (Exhibit 7, p. 30). This is consistent with prior testimony.

Lock states he reviewed the subject's history on LoopNet.com, a commercial realty website. He noted the subject was listed in June 2009 for $14 per-square-foot triple net (NNN). In December 2009, it was reduced to $8.00 per-square-foot. Ultimately, in June 2010 the subject property was rented at $8.00 per-square-foot (NNN), not including a $50,000 improvement loan payable over 60 months at 5.5% interest. Lock believes the loan was equivalent to $2.43 per-square-foot in rent. Lock's report and testimony asserts the actual market rent of the subject property is $7.50, when taking into consideration three to four months of "free rent" that was afforded to the tenant. He uses this rent for the subject property when he includes it as a comparable rent in this analysis. We note that although he asserts the $50,000 loan is equivalent to an additional $2.43 per-square-foot rent, he does not include this as part of the subject's rent in his analysis. If the free rent were included, the subject rent would effectively be $9.93 per-square-foot.

Lock identified three other confidential rental properties. Based on these properties, Lock concludes a market rent of $10.00, which we note is roughly equivalent to the $9.93 rate

we determined above. He asserted "no different adjustments are required for the January 1, 2012 valuation than for the January 1, 2011 valuation." (Exhibit 7, p. 41). However, he does adjust the 2012 rent to reflect the addition of the enclosed patio. To do so, he estimates a market rent of $1.75 per-square-foot of the 800 square-foot patio. Essentially, the result is $10.30 per-square-foot (rounded), or a gross potential income of $48,520. Lock does not explain why the unadjusted rents of his comparables range from $15.90 per-square-foot to $25.57 per-square-foot; with a median of $18.78 per-square-foot and an average of $20.08 per-square-foot, yet his opinion of market rent is substantially less than this evidence. In addition, he had already identified the subject property was rented below market based on conversation with G-F Four's representative, as well as in his own analysis (Exhibit 7, p. 32); yet, his opinion of market rent is very similar to the actual rent received despite identifying the actual rent is below market.

Lock estimates a 9% vacancy and collection loss; a NOI of $36,075; and a capitalization rate of 8.63%. Based on these estimates he concludes an opinion of value based on the income approach of $420,000 rounded. This compares to Olson and Nelsen's reports as follows.

	Olson's Income	Nelsen's Income	Lock's Income
NOI	$69,761	$62,611	$36,075
Vacancy/Collection Loss	6%	5%	10%
Cap Rate	8.6%	8.41%	8.63%
Rounded Conclusion	$810,000	$745,000	$420,000

Olson and Nelsen concluded similar estimates of NOI and vacancy/collection loss, whereas Lock's NOI is only approximately half their estimates and his vacancy/collection loss estimate is one-and-a-half times higher. Given the preponderance of the evidence, we do not believe Lock's estimates reflect actual market actions as of January 1, 2012.

Schulte's Testimony

Clampet Corner hired Patrick Schulte of Commercial Appraisers of Iowa, West Des Moines, Iowa, to review the other appraisers' reports.

Schulte explained his assignment was to review the appraisals to determine if Olson, Nelsen, and Lock's appraisals complied with the Uniform Standards of Professional Appraisal Practice (USPAP) and to determine if they generally conformed to Iowa assessment law. His scope of work was essentially to fact check the data presented in the reports. He inspected the subject property, read all three reports, and had them all available simultaneously. He testified he did not research additional neighborhood or sales data, but he had all the data from the three reports and a copy of the lease of the property in question. He reviewed each report in the same manner and came to opinions and conclusions for various aspects of each report.

Schulte opines that Lock's report includes all the necessary items to comply with USPAP. Schulte asserts Lock's sales comparison approach considered "three reasonably comparable restaurant properties." However, the record shows two of Lock's three comparable properties were not purchased for continued restaurant use. Schulte testified he was aware of this, yet still considers these properties to be good sales and indicators of value. We find, however, they are less persuasive comparable sales than others in the record that were purchased for continued restaurant use.

Schulte reviewed Lock's location adjustments and compared them to the Olson and Nelsen reports. He concurs with Lock's adjustment for location. He believes the subject's location was "one of the hottest locations in the community twenty years ago," but it has taken a long time to grow. He asserts there has been a struggle to build out the vacant land to the east of the subject property. He notes there have been one or two more places developed near the

subject property in the last five years; but more development has occurred at the next interchange to the east. Further, Schulte agrees with Lock's conclusion that the Mustard's building is the most comparable property as it is "relatively large" and sold at a similar time. He considers the Mustard's building location to be more desirable than the subject's, based on land sales. Schulte asserts there is no evidence the subject property is in a superior location. He comes to this conclusion because in his opinion there is "surplus land that sells cheap" in the subject's vicinity. We do not find his testimony compelling or relevant without market support. During cross examination by G-F Four, Schulte testified that he was familiar with the Mustard's building because he appraised it for its sale. He testified that he saw the building "when the carpet had been removed." Regardless, he believes the property was a "relatively new restaurant in good condition," but acknowledges it did have water damage before the sale. We do not know the extent of Schulte's assignment when he appraised the Mustard's building, or whether the appraisal was conditioned on the property "as is" or "subject to" remediating the water damage. Therefore, we give little weight to his opinion of condition.

Schulte explains that when he was engaged for his review services, he was aware the owner and tenant had each appealed the assessment. He was also aware the lease was a major factor in the disputed value. He read the lease and explained he had used the subject lease as a comparable lease in another appraisal. He believes the lease is lower than many build-to-suit restaurant leases, but it is "a healthy retail lease, near $10.00 per-square-foot." He states that for property assessment purposes the base lease of $8.00 per-square-foot has to be adjusted upwards to account for the loan amount that is converted to an amortization. He calculates this loan to be equivalent to $2.43 per-square-foot. His adjusted rent is $10.04 per-square-foot for the first five years; then it fluctuates for the remainder of the lease. Schulte believes both Gerleman and the

property owner are experienced restaurateurs and knowledgeable market participants. As such, he considered the lease to be a recent indication of rent. He considers it "unreasonable to simply disregard this lease." But he stated he understands non-market leases should be disregarded. Lastly, Schulte believes Lock underestimated the contributory value of the enclosed patio by $10,000 to $25,000. In sum, Schulte finds the Lock appraisal "reasonable."

Schulte concluded Nelsen's appraisal "was not made in conformance with accepted Iowa property assessment procedures and methodologies" and overstates the value of the property. Schulte was critical of Nelsen for incorrectly reporting the intended user and having other typographical errors. We have already addressed these issues in the discussion of Nelsen's appraisal and find they do not require completely discounting or disregarding his opinion.

Schulte is critical of Nelsen's determination of market rent. Essentially, Schulte asserts the actual rent is around $49,000 per year, which includes the $50,000 tenant improvement loan; whereas Nelsen estimated a market rent of roughly $71,000 per year. We note it is the market rent, as of January 1, 2012, that would be most indicative of the subject property's market value for assessment purposes, absent the availability of comparable sales. Because of this listing history, Schulte criticizes Nelsen for asserting it should rent for more than it was ever offered for; and, because of this he finds Nelsen's conclusions "illogical." We find Schulte fails to recognize the property received significant improvements between the date of the lease and the assessment; all of the appraisers, as well as Clampet Corner, agree there were positive changes in the market between 2010 and 2012; and all of the appraisers identified to some extent that the lease was below market for the January 1, 2012, assessment date. Yet, Schulte wants to rely on the original lease to determine the unencumbered fee simple market value of the subject property under the income approach.

Schulte was also critical of Nelsen's use of unadjusted land sales in the cost approach. Schulte essentially asserts Nelsen indicated he would adjust the sales, then failed to do so and ultimately relied on the average of the four sales, which results in $5.22 per-square-foot. Schulte asserts that "by that logic you would just assess every property in Altoona" at that rate and not worry if some are better than other sites. Further, Schulte is critical of the development of the cost of the improvements, asserting Nelsen failed to account for site improvements; and in the end, he finds the cost approach developed by Nelsen to be unreliable. We have already addressed these issues and note Nelsen ultimately did not give it any consideration.

Schulte also asserted Nelsen's sales approach has a major flaw because the sales vary from 2007 to 2009 but Nelsen "makes no downward adjustment for market conditions to these five older sales." Schulte further asserted, "it is commonly known and accepted that downward market condition adjustments would apply to these older sales in this market." Schulte believes this results in Nelsen's sales comparison approach overstating the value. However, all three appraisers testified market conditions have improved from 2010 to the assessment date. But, the record also establishes commercial market conditions were weak sometime from 2009 to 2010. Considering the fluctuations of the overall market between 2007, which is the oldest sale date in the record, to January 1, 2012, we find Schulte's assertion that the adjustments *must* be downward, is misplaced.

Schulte criticizes Olson for not addressing the leased fee estate. (Exhibit K, p. 10). Schulte believes this as an "incorrect understanding of assessment methodology." Moreover, he asserts in his review that Olson provides "no explanation as to why a recent lease agreement would not be the most relevant indicator of current market rent." Schulte stated a recent lease must be considered if it was freely negotiated and indicated a recent market transaction. We note

that multiple times throughout Schulte's testimony regarding the review he completed on Olson's appraisal, he stated that "older" leases would not be considered to represent the current market and would likely not be considered. Moreover, he reiterated, "lease activity unrelated to the current market is irrelevant. You look at lease activity related to the current market."

It would seem Schulte does not take into consideration many significant factors of this particular case, regardless of the short time period between the execution of the lease and January 1, 2012. First, Schulte does not seem to consider the substantial transformation of the subject property from a vacated pizza place into a recognizable local going-concern establishment. The improvements themselves were vastly different from the beginning of the lease to the effective date of January 1, 2012. Secondly, Schulte does not agree there was a shift in the economic conditions since executing the lease, to which every other appraiser testified. Rather, Schulte asserts there was "no measurable shift from 2010 to 2012." Finally, he testified that while he interviewed Gerleman, he did not attempt to interview anyone from G-F Four. Because every appraisal he reviewed indicates the property owner was willing to rent the property below market, in part because they anticipated a quick sale; it would seem prudent to have conducted an interview or accept the findings from the other three appraisers. Based on the record evidence, it is clear to this Board that while GF-Four was acting in its own best interest, GF-Four was willing to accept a below market lease because it was led to believe the tenant would purchase the property in a relatively short period of time. Therefore, regardless of the date of the subject lease and because of the aforementioned significant factors, we find the lease is not representative of either a "current lease" or a market-based lease.

Schulte offered further criticism of Olson's report. He was critical of some adjustments, but offered no support for what he believes the correct adjustments should be. He explained,

more than once, that he was reviewing the appraisals to determine compliance with USPAP and applicable Iowa assessment laws. However, USPAP requires a reviewer provide support for areas that they disagree. It is not enough to simply assert an appraiser is incorrect. If the reviewer believes an appraiser is wrong, then USPAP requires the reviewer to provide evidence supporting that assertion. *See* 2012-2013 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, THE APPRAISAL FOUNDATION, Standards Rule 3-3(c) U-34.

Schulte repeatedly stated "he did not perform an appraisal." Therefore, we find little use of his reviews for several reasons. First, he does not offer a value opinion. Second, he does not offer support for areas in which he disagrees with the appraisers who did provide opinions. Finally, we find his understanding of Iowa law to be imprecise in asserting a lease must be considered simply because it is contemporary.

Jim Maloney Testimony

Clampet Corner called Polk County Assessor Jim Maloney to testify. He explained a member of his staff assessed the property in 2011. He recalls that a staff member brought her appraisal to him and asked to rely exclusively on the income approach to value the subject property because, in her opinion, there were no good sales. He stated it was her decision, and she subsequently valued the property by the income approach.

Sometime later in 2011, Maloney responded to a letter from Michael Gano. (Exhibit 6). Michael Gano questioned why the assessed value of the subject property had been drastically reduced. Maloney's response was that the appraiser relied solely on the income approach to value the subject property. (Exhibit 6). He found this "reasonable given the data available." Maloney testified he reviewed the work of the appraiser in his office, Michelle Richards, as did her supervisor, Rod Hervy, and the Chief Deputy Assessor Randy Ripperger. Despite the

statement that no comparable sales exist, we note the appraisals in the record include six viable sales, which occurred between 2007 and September 2010. As such, we question the due diligence of the appraiser and the Assessor's Office in seeking sales for comparison.

Maloney's letter further states the reason for the decrease in the land value was that Richards applied a factor to the land "because the income approach didn't support the existing land value." This methodology is questionable. If Richards' income approach indicated the total value of the property was less than the site value alone, it should have raised questions regarding the validity of the data being analyzed.

The record does not show whether Richards verified the subject property's actual rent was equal to market rent. Her own notes indicate she "had no additional restaurant leases in the area." She used the actual rent of $8.00 per-square-foot; and although she indicates she had a copy of the lease, she did not even consider amortizing the additional $50,000 loan. She clearly only considered the subject's lease in determining the assessment.

Further, we question the lack of reconciliation between her income analysis and the cost approach. She concluded a value of $323,000 by the income approach and $870,800 by the cost approach. Yet, she does not explain why these approaches have a nearly $550,000 difference. In 2012, the assessed value increased because of the patio addition, which Richards believed increased the value. However, ultimately, Maloney said, "he saw litigation coming his way" so he felt he should order an appraisal. Maloney did not have any concerns with Lock's report.

It is clear Richards relied solely on the subject lease and made only minimal attempts, if any, to determine if the lease reflected market rates. Further, there is no reconciliation for extraordinary discrepancies in her income approach compared to her cost approach conclusions. In addition, there was insufficient testimony explaining why the Assessor's Office determined

comparable properties were not available, but were readily available to the three other appraisers who provided reports for consideration.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id*. The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

General Principles of Law Applicable to Assessment of Real Property

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). "Market value" essentially is defined as the value established in an arm's-length sale of the property. *Id*. Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id*.; *Compiano v. Polk County Board of Review*, 771 N.W.2d 392, 396 (Iowa 2009). "[A]bnormal transactions not reflecting market value shall not be taken into account or shall be adjusted to eliminate the effect of factors which distort market value." § 441.21(1)(b). If sales are not available, "other factors" may be considered in arriving at market

value. § 441.21(2). The assessed value of the property shall be one hundred percent of its actual value. § 441.21(1)(a).

Grounds on Appeal

In its post-hearing brief, Clampet Corner argues G-F Four's claim must be dismissed because it is based on impermissible grounds. It states that the only ground G-F Four raised before the Board of Review and this Board was that the property was "assessed for *more* than authorized by law." It contends this ground does not contemplate a challenge that the assessment is for *less than* market value, as G-F Four claims. First, we note the overarching purpose of assessment is to ascertain the fair market value of a property and assess it at 100% of that value. § 441.21(1). Furthermore, we do not find it necessary to reach a determination on whether this ground likewise permits a claim that property is assessed for less than its market value because G-F Four also claimed an error in the assessment on its protest to the Board of Review. On its protest form, it alleged the subject property "is undervalued." This error claim directly asserted the assessment was incorrect. Error in the assessment is not limited solely to mathematical or clerical errors as Clampet Corner alleges, but also errors in judgment. *See* Iowa Administrative r. 701-71.20(4)(b)(4) (suggesting other errors may constitute grounds for appeal pursuant to section 441.37(1)(a)(4)); *Groenendyk v. Mahaska Cnty. Bd. of Review*, No. 02-1568, 2003 WL 22806589 (Iowa Ct. App. 2003) (unpublished). G-F Four thus preserved this ground for our consideration.

We likewise note the gist of this appeal as it was developed at hearing is the correct market value of the subject property. Although G-F Four also raised a claim of inequitable assessment, we do not base our determination on this ground.

In its cross-appeal, Clampet Corner argued the property was assessed for more than the value authorized by law. In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the appellant has a two-fold burden. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). In this case, Clampet Corner must first show the assessment is excessive. § 441.21(3); *Boekeloo*, 529 N.W.2d at 276-77. Second, Clampet Corner must provide evidence of the property's correct value. *Boekeloo*, 529 N.W.2d at 276-77. If PAAB "determines the grounds of protest have been established, it must then determine the value or correct assessment of the property." *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 397 (Iowa 2009). Here, PAAB "makes its independent determination of the value based on all the evidence." *Id*.

Competency of Evidence and Comparables

The sales-comparison method is the preferred method for valuing property under Iowa law. *Compiano*, 771 N.W.2d at 398; *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 779 (Iowa 2009); *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). "[A]lternative methods to the comparable sales approach to valuation of property cannot be used when *adequate* evidence of comparable sales is available to *readily* establish market value by that method." *Compiano*, 771 N.W.2d at 398 (emphasis added). "Thus, a witness must first establish that evidence of comparable sales was not available to establish market value under the comparable-sales approach before the other approaches to valuation become competent evidence in a tax assessment proceeding." *Id*. (citing *Soifer*, 759 N.W.2d, at 782); *Carlon Co. v. Bd. of Review of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997). The first step in this process is determining if *comparable* sales exist. *Soifer*, 759 N.W.2d at 783. If PAAB is not persuaded as to the comparability of the properties, then it "cannot consider the sales prices of those"

properties. *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977)).

> Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court.

Id. at 783 (citing *Bartlett & Co. Grain*, 253 N.W.2d at 94).

Generally, the burden of proof is on the taxpayer to prove one of the statutory grounds for protest by a preponderance of the evidence. § 441.21(3); *Compiano*, 771 N.W.2d at 396. However, if the taxpayer

> offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or person seeking to uphold such valuation to be assessed. *Id*.

"Evidence is competent under the statute when it complies with the statutory scheme for property valuation for tax assessment purposes." *Compiano*, 771 N.W.2d at 398. "[M]arket-value testimony by a taxpayer's witnesses under a comparable-sales approach is 'competent' only if the properties upon which the witnesses based their opinions were comparable." *Soifer*, 759 N.W.2d at 782.

"Factors that bear on the competency of evidence of other sales include, with respect to the property, its '[s]ize, use, location and character," and, with respect to the sale, its nature and timing. *Id.* at 783 (other citations omitted). Likewise, "[t]he use to which comparable properties are put need not be identical to the use of the assessed property." *Hy-Vee Food Stores, Inc. v. Carroll County Bd. of Review*, No. 3-546 / 12-1526 (Iowa Ct. App. October 2, 2013) (unpublished) (citing *Soifer*, 759 N.W.2d at 785). "Nonetheless, a difference in use does affect the persuasiveness of such evidence because 'as differences increase the weight to be given to

the sale price of the other property must of course be correspondingly reduced.' " *Soifer*, 759 N.W.2d at 785 (quoting *Bartlett & Co. Grain*, 253 N.W.2d at 93).

"[T]he proper measure of the value of property is what the property would bring if sold in *fee simple*, free and clear of any leases." *I.C.M. Realty v. Woodward*, 433 N.W.2d 760, 762 (Iowa Ct. App. 1988) (emphasis added); *Merle Hay Mall v. City of Des Moines Board of Review*, 564 N.W.2d 419 (Iowa 1997); *Oberstein v. Adair Cnty. Bd. of Review*, 318 N.W.2d 817 (Iowa Ct. App. 1982). The Iowa courts have repeatedly held that unfavorable leases should not be used to lower assessments. *Merle Hay Mall*, 564 N.W.2d 419 (holding that an unfavorable lease does not reduce a property's assessed value); *Oberstein*, 318 N.W.2d at 819.

Finally, assessors are permitted to consider the use of property as a going concern in its valuation. *Riso v. Pottawattamie Cnty. Bd. of Review*, 362 N.W.2d 513, 517 (Iowa 1985). When an assessor values property as a going concern, "he is merely following the rule that he must consider conditions as they are." *Soifer*, 759 N.W.2d at 788 (quoting *Maytag Co. v. Partridge*, 210 N.W.2d 584, 590 (Iowa 1973)). The assessor is "recognizing the effect of the use upon the value of the property itself. He is not adding on separate items for good will, patents, or personnel." *Id.*

Appraisers' Opinions of Market Value

Based on our findings of fact and foregoing recitation of Iowa law, we conclude the following:

We find all of the appraisers in this case adequately defined the value they intended to capture as market value consistent with the Iowa Code. However, we do not believe that all the appraisers provided market value opinions. We believe Olson and Nelsen provided market value opinions. We believe Lock's opinion more likely reflects the leased-fee value of the property

because of his use of comparable sales that converted to other uses and clear reliance on the subject property's actual rent; and we find Schulte did not offer any credible critique.

Olson's report is the best evidence in the record of the subject property's fair market value as of January 1, 2012. Olson explained his analysis in detail and demonstrated in both his report and testimony that he verified the information he used. Further, Olson acknowledged that Iowa law prefers the sales comparison approach to value. He observed there was ample data available to develop this approach and readily established a market value by this approach alone. Olson's sales represent arm's-length transactions of properties in the Des Moines metro area that sold for continued use as restaurant properties. Furthermore, in support of the sales comparison approach, Olson developed the income approach using contemporary market rents. He considered the existing lease but conclusively determined it was not reflective of market rates as of January 1, 2012. He then used market rents to determine a value for the subject property in fee simple using this approach. For these reasons, we give Olson's appraisal the most weight.

Nelsen acknowledged several errors in his report including misidentifying the purpose of the report and two critical typographical errors regarding the lease and market rents. (Exhibit J, pp. 3, 46). Nelsen also included two questionable sales in his analysis. Nelsen identified Sale #5 as an improved sale; however, the record indicates it was only a site sale. Additionally, he relied on Sale #1 that does not appear to be reasonably similar given it was adjusted 91%. These issues make his appraisal slightly less reliable than Olson's; however, when considered in conjunction with his testimony, his analysis and conclusions lend further support for Olson's opinion of market value. Like Olson, Nelsen was able to readily establish the value of the subject property using the sales approach. He also used comparable sales that continued to be used as restaurants after their purchase. By choosing sales of properties that continued to or were to be used as

restaurants, Olson and Nelsen enhance the persuasiveness of their evidence. *Hy-Vee Food Stores, Inc.*, No. 3-546 / 12-1526.

Lock developed the sales and income approaches to value. At hearing, it was clear Lock was unfamiliar with the comparable sales he considered in his appraisal report, had not verified the information with appropriate due diligence, and considered sales that did not offer a similar current use to the subject property. As previously noted the sales that continued to be used as or were to be used as restaurants are more persuasive indicators of value for the subject property.

Further, Lock included the subject property's 2010 lease as a comparable rent in the income approach, even though his report concludes, "the subject's contracted lease rate may be below market value." (Exhibit 7, p. 32). Moreover, he does not develop a market rent for 2012, but rather relies on his market rent derivation from 2011, and simply adds $1.75 per-square-foot for the 800 square-foot enclosed patio. Lock did not analyze why his conclusion of market rent is significantly less than any other unadjusted rent he considered. These conclusions appear to indicate Lock was under-valuing the property, or valuing something other than the fee-simple market value, by considering a below-market, actual rent of the property. Because Iowa law prefers the sales comparison approach, and other appraisals used more comparable properties and supported those conclusions with income approaches based on market rents, we find Lock's appraisal unreliable.

Schulte provided reviews of all three appraisals in the record. However, we find his reviews flawed on several levels. He repeatedly asserts he did not perform an appraisal, yet in his testimony, he concurs with Lock's opinions and asserts both Olson and Nelsen "overstated" the value of the subject property. By either concurring with another opinion or opining an independent value – he has completed an appraisal, which would require compliance with

USPAP Standard Rule 1. *See* 2012-2013 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, THE APPRAISAL FOUNDATION, Standards Rule 3-3(c) U-34. Essentially, this discredits Schulte's analysis because he purports to have reviewed the other appraisers' work for compliance with USPAP, but appears to be violating the rules himself.

Moreover, we find Schulte's recitation of Iowa law is flawed. He asserts that simply because a property has a "current lease," it must be considered in the valuation process. However, he does not address any of the significant factors surrounding the current lease in this case, including the significant improvements made to the subject property since the execution of the lease and the positive change in the commercial market between 2010 and 2012, to which every other appraiser testified. Further, he implied the income approach was a better indicator of value when Iowa law recognizes sales are to be the primary indicator of value. In addition, regardless of the three appraisals he reviewed, all of which state G-F Four was willing to rent the property under market because it anticipated a quick sale, he is unwilling to agree the current lease does not reflect market rates.

Olson, Nelsen, and Lock all developed the sales comparison approach and the record includes ten comparable sales. Two of Nelsen's sales and two of Lock's were not reasonable comparables or were less reliable indicators of value. The remaining six sales were properties purchased and used for restaurant use in the Des Moines market area. These sales support a conclusion that the subject property's market value can be determined using the sales comparison approach to value. As previously noted, we find Olson's report and analysis therein is the best evidence in the record. We give the remaining witnesses no consideration, as they did not offer opinions of value.

For the foregoing reasons, this Board finds Clampet Corner has failed to prove by a preponderance of the evidence the subject property was over-assessed as of January 1, 2012. Alternatively, we also conclude G-F Four has proven by a preponderance of the evidence that there was an error in the assessment which resulted in an undervaluation of the property as of January 1, 2012. Likewise, the best evidence in the record established the property's correct fair market value is $800,000 based on the statutorily preferred sales comparison approach.

THE APPEAL BOARD ORDERS the assessment of the property located at 2601 Adventureland Drive, Altoona, Iowa, is modified to a total value of $800,000, allocated as $400,000 in land value and $400,000 in improvement value as of January 1, 2012.

The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 21st day of November 2013.

Karen Oberman, Presiding Officer

Stewart Iverson, Board Chair

Jacqueline Rypma, Board Member

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